

X. PRIVATE SCHOOLS

General

It is the policy of the State of Iowa that children with disabilities in private schools will be afforded all the rights they would have available to them if educated in a public education program:

1. Private school children with disabilities will be provided special education and related services in conformance with an individualized education program (IEP).
2. Programs and services for private school children with disabilities will be provided at no cost to the parents.
3. Each LEA and AEA shall provide special education and related services designed to meet the needs of private school children with disabilities residing in the jurisdiction of the agency, if those services are not normally provided by the private school.
4. It is the policy of the State of Iowa that the state's complaint process and due process rights apply to all private school children with disabilities.

Policies and procedures have been established by State law and attendant regulations governing the placement of children with disabilities in private schools within the State of Iowa or in other States. In order to provide for private school involvement and participation in the development of state policy relating to the education of children in private schools, the Iowa legislature has established the Nonpublic School Advisory Committee. The five-member committee is appointed by the Governor to advise the State Board and the director on matters affecting nonpublic schools. Private schools or facilities are thereby afforded an opportunity to be involved in matters relating to the development and/or revision of standards through the membership of the Private School Advisory Committee.

Procedures

General procedures. Private schools will be forwarded copies of rules and standards relating to the education of children with disabilities. Each LEA and AEA shall carry out consultation activities with appropriate representatives of private school children with disabilities as described below.

The State of Iowa assures that all AEAs and public agencies, will comply with the following listed requirements relating to the participation of private school students in project activities supported by IDEA funds. The AEAs and public agencies will describe in its application the manner in which these requirements will be met. No program application will be approved that does not meet all requirements relating to participation of private school students. Each AEA and public agency shall provide assurance and describe the manner and extent of the agency's consultation with representatives of nonpublic schools prior to the preparation of the plan/application. This consultation shall provide a genuine opportunity for the expression of views regarding all relevant matters and shall include consideration of:

- The district's child find process and how parentally placed nonpublic school children with suspected disabilities can participate equitably

- How children with disabilities in nonpublic schools can meaningfully participate in special education and related services
- How, where, and by whom special education and related services will be provided for parentally placed nonpublic school children with disabilities
- How, if the district disagrees with the nonpublic school about the provision of services, the district will provide to nonpublic school officials a written explanation of reasons
- A resulting affirmation that the consultation has occurred, signed by the representatives of participating nonpublic schools

Child find. Each LEA and AEA shall locate, identify, and evaluate all private school children with disabilities, including religious school children and children attending non-accredited nonpublic schools residing in the jurisdiction of the LEA. These activities shall be comparable to activities undertaken for children with disabilities in public schools. Each LEA and AEA shall consult with appropriate representatives of private school children with disabilities on how to carry out the above activities.

Child count. Public school officials must consult with private school officials about how to conduct the annual count of children. The count must be conducted on the same date as the public school count (December 1). The count is used to determine the amount of federal funds used to serve private school children with disabilities in the next fiscal year.

Programs and services. These special education programs and services to be provided to a private school child with a disability will be determined based on an IEP developed in accordance with State law and attendant regulations. The services provided to private school children with disabilities are provided by personnel meeting the same standards as personnel providing services in the public schools.

Transportation. Identified students requiring an instructional program who attend nonpublic schools may attend a program made available by the resident public school. The LEA is responsible for transportation to and from the special education instructional program. If a site other than the nonpublic school is chosen for special education support or related services, the AEA is responsible for transportation to and from the site of the service.

Service location. Public school personnel involved with the identification and evaluation of students with disabilities may perform these services, when required, in nonpublic settings. Identified students requiring an instructional program who attend nonpublic schools may attend a program made available by the resident public school. Students who attend non-public schools and have been identified as entitled to special education support or related services may receive certain services on site at the nonpublic school. Otherwise, the services will be provided at the AEA or the resident public school. On-site services *must* be provided in the case where the IEP team determines the need for: assistance with physical and communication needs of students with physical disabilities, and services of an educational interpreter.

The State of Iowa assures that educational programs and projects which are carried out in public facilities, and which involve joint participation by children with disabilities enrolled in public and private schools, will not include classes or activities that are separated on the basis of school enrollment or children's religious affiliation.

Resources. Iowa's statute regarding provision of special education services for parentally placed students in nonpublic schools (256.12) includes the requirement that "school districts and area education agency boards shall make public school services, which shall include special education programs and services...available to children attending nonpublic schools in the same manner and to the same extent that they are provided to public school students." Subsequently, the proportionate funding requirements in IDEA 2004 are not an issue in Iowa.

Funding of services. Students who receive special education services, including those enrolled in nonpublic schools, shall be weighted for funding purposes at the appropriate level as provided in code and rule. A local school district providing services shall submit an accounting to the Department of Education for the actual costs of the special education programs and services provided. The department shall review and approve or modify the accounting and shall notify the department of revenue and finance of the approved accounting amount. The Department of Revenue and Finance shall adjust the payment to the local school district for the next fiscal year by the difference between the amount generated by the weighting for the provision of services to nonpublic school students, and the amount of the actual costs as reflected in the local school district's accounting. Any amount paid by the Department of Revenue and Finance shall be deducted monthly from the state foundation aid paid during that fiscal year to all school districts in the state. The portion of the total amount of the approved accounting amount that shall be deducted from the state aid of a school district shall be the same as the ratio that the budget enrollment for the budget year of the school district bears to the total budget enrollment in the state for that budget year.

Appropriate use of funds. Special schools for eligible individuals who require special education outside the general education environment may be maintained by individual LEAs, by the AEA, jointly by two or more AEAs, by the state directly, or by approved private providers. Department recognition of agencies providing special education and related services shall require or be conditional upon assurances that the nonpublic agencies and state-operated programs providing special education and related services are doing so in compliance with the state rules, and approval for the nonpublic agency to provide special education and related services, and to receive special education funds for the special education and related services contracted for by an LEA or an AEA.

It is the policy of the State of Iowa that if Part B IDEA funds are used to support the education of children with disabilities from private schools, such funds will not directly benefit the private school, or be used to maintain the existing level of instruction in private schools. Funds will be used to meet the specific needs of the students enrolled in private schools, rather than the needs of a private school or the general needs of the students enrolled in a private school.

It is the policy of the State of Iowa that Part B IDEA funds may be used to make public personnel available in nonpublic facilities to the extent necessary to provide child find services and the services specified in the IEP. The manner in which these services are provided is determined through consultation with representatives of nonpublic schools as has been described previously in this section.

It is also the policy of the State of Iowa that, if Part B IDEA funds are used to support the education of children with disabilities from nonpublic schools, such funds will not include payment of salaries of nonpublic school personnel except for services performed outside their duty hours and under public supervision and control.

Education services provided by an LEA or AEA for children with disabilities enrolled in a private or nonpublic school or facility with funds generated under Part B IDEA shall remain under direct administrative control and direction of the LEA or AEA over such services including all equipment and funds.

Public agencies that place equipment and supplies acquired with Part B IDEA funds in a private facility must assure that:

- a) Such equipment and supplies will remain under the administrative control and title of the public applicant agency.
- b) The equipment and supplies that are placed in a private school will remain in the private school only for a period of time needed for project activities.
- c) The equipment and supplies are used only for the purposes of the project.
- d) The equipment and supplies will be removed from the private school site when no longer needed for project purposes or removal is necessary to assure that such equipment and supplies are not used for other than project purposes.
- e) Any such equipment and supplies can be removed without remodeling the private school facilities.

The State of Iowa assures that funds acquired under provision of Part B IDEA will not be used for the construction of private school facilities.

Students placed by a public agency in a private school

Before a public agency places an eligible individual in, or refers an eligible individual to, a nonpublic school or facility, the agency shall initiate and conduct a meeting to develop an IEP. The agency shall ensure that a representative of the nonpublic school or facility attends the meeting. If the representative cannot attend, the agency shall use other methods to ensure participation by the nonpublic school or facility. The public agency shall ensure that the parents and an agency representative are involved in any decision about the individual's IEP and agree to any proposed changes in the program before those changes are implemented. Even if a nonpublic school or facility implements an individual's IEP, responsibility for compliance with these rules remains with the public agency and the state.

Students placed in a private agency by parents or guardians

Students with disabilities may be placed in private educational programs by their parents. In some instances, concerns regarding FAPE may be at issue. In other cases, other reasons explain the placement. As used in this part, private school children with disabilities means children with

disabilities enrolled by their parents in private schools or facilities other than children with disabilities covered under 300.400-300.402 (i.e., children with disabilities who are or have been placed in or referred to a private school or facility by a public agency as a means of providing special education and related services).

When a child with a disability is offered a free appropriate public education by a public education agency and the parents waive the opportunity being made available in favor of a private school placement, the parents assume all financial responsibility for the child's education except for services provided by LEA and AEA as required by code. In instances where the parent contends that he/she is being forced, at the parent's own expense, to seek private school placement because an appropriate public program is not available, and the responsible education agency disagrees, that disagreement and the question of financial responsibility are subject to due process procedures.

School districts and area education agency boards shall make special education programs and services available to children attending nonpublic schools in the same manner and to the same extent that they are provided to public school students. This requirement applies to students attending accredited nonpublic schools. Student-specific services (e.g., assistance with physical and communication needs of students with physical disabilities, and services of an educational interpreter) *must*, with the permission of the lawful custodian, be provided on nonpublic sites in the case where the IEP team determines the need for such services. Students who attend nonpublic schools and have been identified as entitled to special education support or related services may receive those services on a neutral site or at the AEA or the resident public school. Students requiring an instructional program who attend nonpublic schools may attend a program made available by the resident public school.

The area education agencies shall provide services and programs to pupils enrolled in public or nonpublic schools located within its boundaries that are on the list of accredited schools. The programs and services provided to students enrolled in nonpublic schools shall be comparable to programs and services provided to students enrolled in public schools.

Students placed in a private agency when FAPE is an issue. Disagreements between a parent and a public agency regarding the availability of a program appropriate for an eligible individual, and the question of financial responsibility, are subject to the due process procedures.

If the parents of an eligible individual, who previously received special education and related services under the authority of a public agency, enroll the child in a nonpublic preschool, elementary or secondary school without the consent of or referral by the public agency, a court or administrative law judge may require the agency to reimburse the parents for the cost of that enrollment if the court or administrative law judge finds that the agency had not made FAPE available to the child in a timely manner prior to that enrollment and the nonpublic placement is appropriate. A parental placement may be found to be appropriate by an administrative law judge or a court even if it does not meet the state standards that apply to education provided by the department and LEAs.

The cost of reimbursement may be reduced or denied:

1. If at the most recent IEP meeting that the parents attended prior to removal of the eligible individual from the public school, the parents did not inform the IEP team that they were rejecting the placement proposed by the public agency to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a nonpublic school at public expense; or at least ten business days (including any holidays that occur on a business day) prior to the removal of the eligible individual from the public school, the parents did not give written notice to the public agency of the information described in this rule.
2. If, prior to the parents' removal of the individual from the public school, the public agency informed the parents, through the mandatory notice requirements, of its intent to evaluate the individual (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the individual available for the evaluation, or upon a judicial finding of unreasonableness with respect to actions taken by the parents.

The cost of reimbursement may not be reduced or denied for failure to provide the notice if:

1. The parent is illiterate and cannot write in English;
2. Compliance would likely result in physical or serious emotional harm to the individual;
3. The school prevented the parent from providing the notice; or
4. The parents had not received required notice of the notice requirement.

Students placed in private schools when FAPE is not an issue. If an eligible individual has FAPE available and the parents choose to place the individual in a nonpublic school or facility, the public agency is not required to pay for the individual's education at the nonpublic school or facility. However, the public agency shall make services available to the individual consistent with the requirements of the Iowa Code.

Legal References

Federal Requirements

20 USC 1411 (g)Subgrants to local educational agencies
20 USC 1412(a)(3).....Child find in private schools
20 USC 1412(a)(10)(A)-(C)Children in private schools
20 USC 1415.....Procedural safeguards
20 USC 1419.....Preschool grants

Iowa Requirements

Iowa Code Chapter 256 – Department of Education

Iowa Code Chapter 256B – Special Education

Iowa Code Chapter 273 – Area Education Agencies

Iowa Code Chapter 257

Iowa Administrative Rules of Special Education:

- 281-41-15 - LEA Responsibilities

- 281-41.23 - Special School Provisions

- 281-41.74 - Eligible individuals in nonpublic schools

- 281-41.104 - Prior notice by a public agency

- 281-41.143 - Monitoring

- 281-41.105 - Complaints to the department